

APPEAL NO. 010505

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 6, 2001. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) average weekly wage was \$283.62, based upon the earnings of a same or similar employee. The claimant has appealed this determination, arguing that it is incorrect and not supported by sufficient evidence. The respondent (carrier) replies that the decision and order of the hearing officer are correct and should be affirmed.

DECISION

Affirmed, as reformed.

We first note that the hearing officer transposed some numbers in Finding of Fact No. 5. He listed gross wages for a same or similar employee as \$3,678.11, whereas the evidence shows the correct figure to be \$3,687.11. See Claimant's Exhibit No. 5. The hearing officer's calculation of hourly wage was affected by the transposition. He calculated the hourly wage as \$8.62, when the correct figure is \$8.46. This finding is reformed to conform to the evidence. The calculation error did not affect the decision, however, as the hearing officer reached the same bottom line figure that is shown on Claimant's Exhibit No. 5.

The hearing officer concluded that the circumstances of this case warranted use of the usual wage that the employer pays a similar employee for similar services, in accordance with Section 408.041. The hearing officer is the sole judge of the weight and credibility of the evidence, Section 410.165(a), resolves the conflicts and inconsistencies in the evidence, Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ), and determines what facts have been established from the conflicting evidence St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer, as reformed, are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge